

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
EchoStar Satellite Corporation)
For Assignment of Direct Broadcast)
Satellite Orbital Position and Channels)
File No. DBS-88-01

ORDER

Adopted: May 7, 2003

Released: May 7, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order we grant EchoStar Satellite Corporation's (EchoStar) outstanding assignment for 11 channels for a Direct Broadcast Satellite (DBS) system. As described below, EchoStar is entitled to use 11 DBS channels pursuant to its 1989 permit. Specifically, we authorize EchoStar to operate a satellite using three channels at the 157° W.L. orbital location and eight channels at the 148° W.L. orbital location.

II. BACKGROUND

2. This action follows a Memorandum Opinion and Order (EchoStar Order) in which the Satellite Division concluded that EchoStar had satisfied the first due diligence condition of its permit to operate a DBS system at a western orbital location. In the EchoStar Order, the Division found that EchoStar had demonstrated that it has contracted for the construction of a satellite to be located at a western orbital location. As explained in the EchoStar Order, particular orbital positions and channels are not assigned to a DBS permittee unless and until a permittee has demonstrated that it has fulfilled this component of the due diligence requirements. Pursuant to its permit, EchoStar is entitled to use 11 DBS channels at a western orbital location. EchoStar requested an assignment of eight channels at 148° W.L. and three channels at 175° W.L. The Division concluded, however, that EchoStar's due diligence

1 EchoStar Satellite Corporation, For Assignment of Direct Broadcast Satellite Orbital Position and Channels, Memorandum Opinion and Order, 17 FCC Rcd 8827 (Int'l Bur. 2002) (EchoStar Order). Compass System, Inc. filed an Application for Review of this Order on June 17, 2002. We will address this application in a separate order.

2 EchoStar Order, 17 FCC Rcd at 8829.

3 Continental Satellite Corporation, et al., Memorandum Opinion and Order, 4 FCC Rcd 6292, 6300 (1989).

4 Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from David K. Moskowitz, Senior Vice President and General Counsel, EchoStar Satellite Corporation (January 8, 2002). At the time the

(continued...)

showing demonstrated its intent to construct only one satellite. Consequently, the Division ordered EchoStar to select one western orbital location and provided EchoStar 10 days to specify a revised preference for an orbital location and channel assignment.⁵

3. On May 28, 2002, EchoStar submitted its request for 11 odd-numbered channels, 1-21, at the 157° W.L. orbital location.⁶ EchoStar explained that the 148° W.L. orbital location was no longer a feasible option because it was entitled to 11 channels, and only eight channels were available at the 148° W.L. orbital location. Further, the 175° W.L. orbital location was no longer viable because its prior authorization for 22 channels at that location had been cancelled, making an assignment at the westernmost orbit slot unattractive.⁷ Thereafter, the Division nonetheless directed EchoStar to select one of its original orbital location selections, either 148° W.L. or 175° W.L.⁸ In response, EchoStar requested to use the eight remaining channels at 148° W.L. subject to a request for further review of its entitlement to its full compliment of 11 channels.⁹

4. Subsequently, on February 11, 2003, EchoStar advised the Commission that the “ideal placement” of its 11 frequencies would be eight channels at 148° W.L. and three channels at 157° W.L.¹⁰ EchoStar is presently using the eight channels at 148° W.L. pursuant to a grant of special temporary authority. As a result, EchoStar asserts it would be able to continue to provide service to the public at that location under a permanent authorization.¹¹ With respect to the three channels at 157° W.L., EchoStar states it would bring the channels into timely use by moving an existing satellite, EchoStar 4, to that orbital location.¹² EchoStar observes that although EchoStar 4 is not operating at full capacity, it has enough functioning transponders to operate over three channels. As a result, according to EchoStar, EchoStar 4 is well suited to operate at 157° W.L.¹³

5. In further support of its request for three channels at the 157° W.L. orbital location, EchoStar indicates that the tilt or “slew” angle to transmit to the United States is attainable by EchoStar 4

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EchoStar DBS permit was granted the east/west pairing rule was in effect. Under this rule, DBS channels would be assigned in east/west pairs with service to the eastern half of the United States permitted from the 61.5° W.L., 101° W.L., 110° W.L. and 119° W.L. orbital locations, and service to the western half of the United States permitted from the 148° W.L., 157° W.L., 166° W.L. and 175° W.L. orbital locations. Subsequently the east/west pairing policy was eliminated because full coverage of the contiguous United States (CONUS) is technically possible from several of the eastern locations.

⁵ *EchoStar Order*, 17 FCC Rcd at 8830.

⁶ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation (May 28, 2002).

⁷ *Id.*

⁸ Letter to Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, from Cassandra C. Thomas, Deputy Chief, Satellite Division (December 24, 2002).

⁹ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation (Jan. 3, 2003); *see also*, EchoStar Satellite Corporation, Application for Review, Filed January 23, 2003.

¹⁰ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation (February 11, 2003) (*EchoStar Feb. 11 Letter*).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

from 157° W.L. but not likely from 175° W.L.¹⁴ EchoStar explains that the slew angle is the degree of tilt to which a satellite's control system must be to orient the spacecraft in space, to effectively transmit to the United States. EchoStar states it is more capable of maintaining the slew angle for EchoStar 4 from the 157° W.L. orbital location. This is because EchoStar 4's design specifications limit the capability of maintaining the higher slew angle required at 175° W.L. Thus, EchoStar 4 would require the use of more station keeping fuel at 175° W.L. than would be needed to maintain the slew angle and keep the satellite in place at 157° W.L.¹⁵ In addition, EchoStar states that customers receiving service from 148° W.L. will also be able to receive service from 157° W.L. utilizing existing receive dishes, but would not be able to do so from a satellite located at 175° W.L.¹⁶

III. DISCUSSION

6. EchoStar's 1989 permit entitled it to operate 11 channels in the western portion of the orbital arc.¹⁷ EchoStar requested authority to operate its 11 channels at two orbital locations. The Division found that while EchoStar had satisfied its due diligence showing, it had contracted for only one satellite. The Division, therefore, requested EchoStar to implement all of its channels at one orbital location. EchoStar responded, however, that under a revised business plan it could provide service to the public most expeditiously by utilizing two orbital locations. Specifically, EchoStar indicates that it can implement this plan by moving an in-orbit satellite to 157° W.L. and by operating the channels at 148° W.L., on a regularly-licensed basis, that it is now operating pursuant to special temporary authority.

7. The purpose of the Commission's DBS due diligence rules, and its policy of assigning orbit locations and channels only after a construction contract is in place, is to ensure that permittees implement services to the public in a timely manner and do not warehouse spectrum.¹⁸ We see no reason to preclude EchoStar from operating its 11 channels at two orbit locations because it can do so immediately. Limiting EchoStar to one orbit location because its initial contract involved only one satellite would frustrate its business plans and undermine the purpose of our due diligence requirement. Indeed, EchoStar can meet its ultimate due diligence milestone – providing service to the public – immediately upon grant of these assignments. Thus, we assign EchoStar to operate on three channels at the 157° W.L. orbital location, and eight channels at the 148° W.L. orbital location.

8. With respect to the three channels at the 157° W.L. orbital location, EchoStar states that it intends to move EchoStar 4 to this location.¹⁹ This will allow EchoStar to provide timely service to the public. We note, however, EchoStar's acknowledgement that EchoStar 4 is not operating at full capacity because of several transponder anomalies.²⁰ As a result, we require EchoStar to ensure continuity of service by filing a timely application for a replacement satellite before EchoStar 4 is no longer able to provide service from 157° W.L.

¹⁴ *Id.* at p. 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Continental Satellite Corporation, 4 FCC Rcd at 6299. In 1992 EchoStar was assigned 11 channels at the 119° W.L. orbital location and granted additional time to demonstrate due diligence for its proposed western satellite. EchoStar Satellite Corporation, Assignment of Direct Broadcast Satellite Orbital Positions and Channels, *Memorandum Opinion and Order*, 7 FCC Rcd 1765, 1770 (1992).

¹⁸ Dominion Video Satellite, *Order*, 14 FCC Rcd 8182 (Int'l Bur. 1999).

¹⁹ The EchoStar 4 satellite is presently at the 119° W.L. orbital location.

²⁰ *EchoStar Feb. 11 Letter*, at 1.

9. With respect to 148° W.L., there are eight unassigned channels at this orbital location. Under the circumstances in this case, we will assign EchoStar to these eight channels. EchoStar has a longstanding interest in DBS channels at 148° W.L.²¹ It is currently licensed and operating on the other twenty-four channels at 148° W.L. and is providing service on the remaining eight channels under special temporary authority.²² There are no pending requests for DBS frequencies at 148° W.L. EchoStar is able to provide immediate service to the public from these channels. As the only entity licensed to operate from the 148° W.L. orbital location, EchoStar can use the additional channels to provide continued and enhanced service to its customers from a single space station platform.²³

IV. CONCLUSION AND ORDERING CLAUSES

10. Based on the foregoing, we assign EchoStar Satellite Corporation 11 DBS channels pursuant to its western DBS permit, File No. DBS-88-01, eight channels at the 148° W.L. orbital location and three channels at the 157° W.L. orbital location.

11. Accordingly, IT IS ORDERED that the authorization of EchoStar Satellite Corporation is modified to allow EchoStar to move the EchoStar 4 satellite to the 157° W.L. orbital location and provide service from channels 1, 3 and 5.

12. IT IS FURTHER ORDERED that EchoStar Satellite Corporation has 120 days from the release date of this Order to move EchoStar 4 from the 119° W.L. orbital location to the 157° W.L. orbital location and must notify the Commission within 10 days of the relocation.

13. IT IS FURTHER ORDERED that during the drift of EchoStar 4 from 119° W.L. to the 157° W.L. orbital location, EchoStar Satellite Corporation shall coordinate its tracking, telemetry, and control (TT&C) operations with existing geostationary satellites to ensure that no unacceptable interference results from EchoStar 4's TT&C operations.

14. IT IS FURTHER ORDERED that the authorization granted in this Order is subject to the following conditions: (1) until the International Telecommunication Union (ITU) Region 2 Broadcasting Satellite Service (BSS) Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 4 and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 157° W.L. to other BSS or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed to EchoStar 4 unless and until Appendices 30 and 30A plan modification procedures are successfully and timely completed.

15. IT IS FURTHER ORDERED that EchoStar Satellite Corporation is authorized to operate EchoStar 2 to provide DBS service from channels 18-32 (even) at the 148° W.L. orbital location.

16. IT IS FURTHER ORDERED that the authorization granted in this Order is subject to the following conditions: (1) until the International Telecommunication Union (ITU) Region 2 Broadcasting

²¹ Continental Satellite Corp., 4 FCC Rcd at 6295; EchoStar Satellite Corporation, 7 FCC Rcd at 1770.

²² EchoStar Satellite Corporation, *Order and Authorization*, DA 03-1263 (released April 25, 2003).

²³ See Letter to David Moskowitz, Senior Vice President and General Counsel, EchoStar Satellite Corporation, Request for STA (SAT-STA-20011025-00091), from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division (December 28, 2001) (requiring EchoStar to notify its customers that service may be diminished or discontinued at any time).

Satellite Service (BSS) Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 2 and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 148° W.L. to other BSS or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed to EchoStar 2 unless and until Appendices 30 and 30A plan modification procedures are successfully and timely completed.

17. IT IS FURTHER ORDERED that EchoStar Satellite Corporation is no longer required to submit a revised construction milestone schedule as set forth in paragraph 11 in EchoStar Satellite Corporation, For Assignment of Direct Broadcast Satellite Orbital Position and Channels, *Memorandum Opinion and Order*, 17 FCC Rcd 8827 (Int'l Bur. 2002).

18. This action is taken pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief
Satellite Division